IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sayyed Mazhar Rizvi Vs. State of Rajasthan

S.B.CR.MISC. PETITION NO.1534/2006

DATE OF ORDER :: December 06, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Kalu Ram Bhati, for the petitioner.
Mr.Ashok Upadhyaya, P.P.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 14.11.2006 passed by the Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Misc. Case No.102/2006, whereby the trial court dismissed the application filed by the petitioner under section 457 Cr.P.C. seeking interim custody of currency notes worth Rs.10,00,000/- seized by the police under section 102 Cr.P.C.

I have heard learned counsel for the petitioner and the Public Prosecutor. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioner that the petitioner is "Mutwalli" of Dargah Sarwar Sharif, Distt. Ajmer appointed by Rajasthan Board of Muslim Wakfs. A letter issued No. WAKF/2934 dt. 10.7.2004 issued by the Chief Executive Officer, Rajasthan Board of Muslim Wakfs, Jaipur has been placed on record, which shows that the petitioner has been appointed as "Mutwalli" of Dargah Sarwar Sharif, Distt. Ajmer. Under the Rajasthan Wakf Board (Election of Members) Rules, 1999, the petitioner has been duly elected to the office of the Member of the Rajasthan Wakf Board. A copy of Form-24 dt. 10.01.2005 signed by the Returning Officer has been placed on record. According to the learned counsel for the petitioner the petitioner is "Mutwalli" of Dargah Sarwar Sharif and, therefore, in order to undertake the repair work of the Dargah Sarwar Sharif, Distt. Ajmer, the donation was collected from various donors of Mumbai and while he was coming to Dargah Sarwar Sharif by a vehicle bearing No. MH-01/VA-7052, he met with an accident; some currency notes worth Rs.10,00,000/-, which were in the said vehicle being carried by the petitioner for the repair work of Dargah Sarwar Sharif, were seized by the police under section 102 Cr.P.C. and, therefore, the petitioner is entitled to possess the said amount.

Learned Public Prosecutor has produced the investigation diary. An enquiry was made by the police in this respect and after enquiry, the police came to the conclusion that on 12.8.2006, the petitioner received donation from the various donors amounting to Rs.6,00,000/-, however, the expenses for repair work of the Dargah were more and, therefore, he also received the donation of Rs.2,00,000/- from one Mohammed Aslam and as per the police inquiry under section 102 Cr.P.C., the seized amount was the amount of collection of donation meant for repair work of Dargah Sarwar Sharif, Distt. Ajmer. Thus, from the police investigation also, it does not appear that the amount is undisclosed income of the petitioner.

In Commissioner of Income Tax, Allahabad & Ors. vs. M/s. Vindhya Metal Corporation & Ors., **JT 1997 (3) S.C. 522**, the Apex Court held that the mere fact that Vinod Kumar Jaiswal was in possession of this amount and did not have any documents with him regarding its ownership or possession could not be treated as appears to have been done by the Commissioner as information relatable to a conclusion that it represented income which would not have been disclosed by Vinod Kumar Jaiswal for purposes of the Act. Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as suficient by the reasonable

person, leading to an inference that it was income which would not have been disclosed by the person in possession for purposes of the Acts.

In the case of Commissioner of Income Tax, Allahabad vs. M/s. Vindhya Metal Corporation & Ors. (supra), one Vinod Kumar Jaiswal, while he was travelling from Mirzapur to Calcutta by the Kalka Mail on December 25, 1981, was detained at Moghal Sarai Railway Station by the Railway Police and an attache case containing a sum of Rs.4,63,000/- was seized from him on the suspicion that the money was stolen property or had been obtained through some other offence. A case was registered under section 411 I.P.C. read with section 41 and 102 Cr.P.C. An intimation of such seizure was sent to the Income Tax Authorities. The said amount was claimed by the Income Tax Department. The Apex Court held that merely because Vinod Kumar Jaiswal has no document with him regarding his ownership or possession, could not be a ground to constitute the information relatable to a conclusion that it represented income which would not have been disclosed by him.

In C.I.T., Jodhpur vs. State of Rajasthan & Ors., **1998 Cr.L.R. (Raj.) 869,** on a similar fact, this Court held that there is no dispute in it that the documents and currency note were

recovered by the Police Officers during the search conducted under section 102 Cr.P.C. It further appears from the record that the documents and the currency notes were not required for the purpose of any inquiry or trial and, therefore, the learned Additional Chief Judicial Magistrate was legally competent to pass suitable orders under section 457 Cr.P.C. regarding the custody or disposal of the documents as well as of the currency notes which had been seized by the Police Officer. The petitioner C.I.T., Jodhpur did not satisfy the learned Additional Chief Judicial Magistrate that the Income Tax Department was entitled to obtain possession of the documents as well as the currency notes recovered by the police and, therefore, no fault can be found in the impugned order passed by the learned Additional Chief Judicial Magistrate. The Additional Chief Judicial Magistrate by order impugned therein had given the custody of documents and currency notes on "Supurdaginama" to non-petitioner therein on furnishing the "Supurdaginama" of Rs.10,00,000/- each.

Keeping in view the investigation report as evident from the investigation diary and the fact that the petitioner is "Mutwalli" of Dargah Sarwar Sharif, Distt. Ajmer and the police during inquiry held by the police, it appears that the petitioner collected the amount which was donated by the persons at

Mumbai for repair work of Dargah Sarwar Sharif and, therefore, the trial court gave notice to the Income Tax Department and the Income Tax Department was afforded opportunity on various occasions to put its case, which the Income Tax Department failed and yet the trial court declined to give the custody of said currency notes on the ground that the petitioner failed to show the documents of his ownership. In my view, the order impugned cannot be sustained and is liable to be set aside keeping in view the decision of the Hon'ble Apex Court in Commissioner of Income Tax, Allahabad & Ors. vs. M/s. Vindhya Metal Corporation & Ors. (supra).

Consequently, the criminal misc. petition is allowed. Order dt. 14.11.2006 passed by the trial court is set aside and the trial court is directed to give the interim custody of currency notes worth Rs.10,00,000/-, which have been seized by the police under section 102 Cr.P.C., in the instant case, on the terms and conditions which the trial court thinks proper.

[H.R.PANWAR],J.

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